UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,642	09/30/2003	Frank Eliot Levine	AUS920030484US1	4690

35525 7590 02/27/2007		EXAMINER
IBM CORP (YA)		CHOU, ANDREW Y
C/O YEE & ASSOCIATES PC		

ART UNIT	PAPER NUMBER
2192	

IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS, TX 75380

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/674,642	LEVINE ET AL.
	Examiner	Art Unit	
	Andrew Y. Chou	2192	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>30 November 2006</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4, 6-13, 15-21, and 23-25* is/are pending in the application.

　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-13,15-21 and 23-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _____ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　a)☐ All　b)☐ Some *　c)☐ None of:

　　1.☐ Certified copies of the priority documents have been received.

　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
　Paper No(s)/Mail Date *3/18/2006, 10/03/2006, 11/10/2006*

4)☐ Interview Summary (PTO-413)
　Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

1.   This action is responsive to the application filed on 11/30/2006

2.   Claims 1-4, 6-13, 15-21, and 23-25 have been examined. Claims 1, 10, and 18

are independent claims.

3.   Claims 1, 3, 10, 12, 18, and 20 were amended

4.   Claims 5, 14, and 22 were cancelled.

Information Disclosure Statement

5.   The Office acknowledges receipt of the Information Disclosure Statements filed

on 08/18/2006, 10/03/2006, and 11/10/2006. They have been placed in the application

file and the information referred to therein has been considered by the examiner.

Oath/Declaration

6.   The Office acknowledges receipt of a properly signed oath/declaration filed on

09/30/2003.

Response to Arguments

7.   Applicant's arguments with respect to claims rejection have been considered but

are moot in view of the new grounds of rejection to now amended claims. See

Kaneshiro et al. US 5,950,003 (hereinafter Kaneshiro) made of record below.

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9.   Claims 1-4, 6-13, 15-21, and 23-25 are rejected under 35 U.S.C. 102(b) as being

anticipated by Kaneshiro et al. US 5,950,003 (hereinafter Kaneshiro).

Claim 1:

Kaneshiro discloses a method in a data processing system for monitoring the execution

a compiled program having a set of groupings, the method comprising:

selecting a grouping from the set of groupings (see for example column 8, lines

7-17 "subroutines") for the compiled program to form a selected grouping (see for

example column 8, TABLE 1, "start procedure (name, record)");

associating a set of indicators with instructions in the selected grouping within the

set of groupings, wherein the set of indicators provides data on the execution of the

instructions by a processor executing the instructions (see for example column 13, lines

15-43, "...inserting instructions...");

executing the compiled program, wherein data is generated upon encountering

an indicator in the set of indicators, the data comprising at least one of a number of

times each instruction on the selected grouping has been executed and a number of

visits to the selected grouping (see for example column 7, line 65- column 8, line 7); and

collecting the data (see for example column 7, line 65- column 8, line 7).

Claim 2:

Kaneshiro further discloses the method of claim 1 further comprising:

repeating the selecting, associating, executing, and collecting steps for all

groupings in the set of groupings (see for example FIG. 4, and related text).

Claim 3:

Kaneshiro further discloses the method of claim 2 further comprising:

performing the repeating step each time a timer expires (see for example column

8, TABLE 1, "start procedure", "end procedure").

Claim 4:

Kaneshiro further discloses the method of claim 1 further comprising:

responsive to identifying an instruction in an instruction cache for execution,

determining whether an indicator from the set of indicators is associated with the

instruction (see for example column 13, lines 15-43); and

counting each event associated with execution of the instruction if the indicator is

associated with the instruction form the data (see for example column 13, lines 25-39)

Claim 5: (Cancelled)

Claim 6:

Kaneshiro further discloses the method of claim 1, wherein the set of indicators are

located in a shadow memory (see for example column 8, TABLE 1, end profile

subroutine with deallocate memory).

Claim 7:

Kaneshiro further discloses the method of claim 1, wherein the data provides an

identification of a usage of routines in the compiled program (see for example FIG. 11,

S24, and related text).

Claim 8:

Kaneshiro further discloses the method of claim 1, wherein the method is located a

scanning daemon (see for example FIG. 4, and related text).

Claim 9:

Kaneshiro further discloses the method of claim 1, wherein the grouping is selected

from one of a page, a subroutine, or a module a program (see for example column 8,

TABLE 1, "start profile").

Claims 10-13:

Claims 10-13 are data processing system versions of the claimed method steps

discussed in claims 1-4 above, wherein Kaneshiro also discloses as such a system (e.g.

Fig. 11, and related text). Thus, accordingly these claims would also be anticipated by

Kaneshiro.

Claim 14: (cancelled)

Claims 15-17

Claims 15-17 are data processing system versions of the claimed method steps

discussed in claims 6-9 above, wherein Kaneshiro also discloses as such a system (e.g.

Fig. 11, and related text). Thus, accordingly these claims would also be anticipated by

Kaneshiro.

Claim 18-21:

Claims 18-21 are computer program products of the claimed method steps discussed in

claims 1-4 above. Thus, accordingly these claims would also be anticipated by

Kaneshiro.

Claim 22: (cancelled)

Claims 23-25:

Claims 23-25 are computer program products of the claimed method steps discussed in

claims 6-8 above. Thus, accordingly these claims would also be anticipated by

Kaneshiro.

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Andrew Y. Chou whose telephone number is (571) 272-

6829. The examiner can normally be reached on Monday-Friday, 8:00 am – 4:30 pm. If

attempts to reach the examiner by telephone are unsuccessful, the examiner's

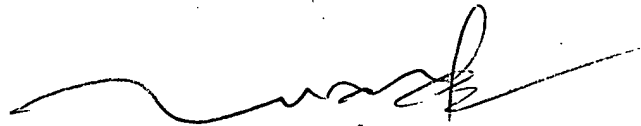supervisor, Tuan Q. Dam, can be reached on (571) 272-3695.

The fax phone number for the organization where this application or proceeding

is assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed tot eh TC 2100 Group receptionist whose telephone number is (571) 272 2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

AYC